S/L 14
15.09.2026
Court No.9
Swd

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 553 of 2023

National Insurance Company ltd.
VS
Kalpana Banerjee & Ors.

Mr. P. K. Pahari.
… for the Appellant/Insurance Co.

Mr. Niranjan Maity,
Mrs. Indrani Ghosh.
… for the Respondent/Claimant.

1. The learned Advocates for the parties are present.
2. Heard learned Advocates.
3. This appeal is directed against the order judgment and award dated 17th April, 2023 passed by the learned Additional District Judge, 6th First Track Court, Alipore, in MAC Case No.45 of 2019.
4. The case of the claimant before the learned Trial Court may be summed up thus:

   On 24.05.2016 while the victim Kalpana Banerjee was going towards Kolkata side from Thakurpukur side travelling by a bus bearing No.WB 19G 4534 near the crossing of Bhupen Roy Road along James Long Sarani as one of the passenger, the diver offending vehicle No. WB-196-4534 was proceeding with his vehicle rashly,

carelessly & negligently and all on a sudden stopped the vehicle and due to sudden jerking, the said Kalpana Banerjee fell down inside the offending Bus and as a result she sustained fracture injuries on her person causing permanent disablement.

Rash, careless & negligent driving of the driver of the offending vehicle No.WB-19G-4534 (Private Bus) was the sole cause for this pathetic accident.

5. Pursuant to filing of this case, notice was issued upon the opposite parties. The opposite party vehicle owner did not appear to contest the case. However, the opposite party Insurance Company contested by filing written statement. Issues were framed and evidence was adduced.

6. The learned Trial Judge upon considering the evidence adduced and upon hearing the learned Advocate was pleased to dispose the claim case by observing and directing as follows:

"Hence, it is,

Ordered

That the instant case be and the same is allowed on contest against OP nO.2 the National Insurance Company Ltd. and ex parte against the other Opposite Party.

The petitioner do get award an of Rs.2,74,000/- (Rupees two lakh seventy four thousand only) plus interest @ 6% per annum thereon from the date of filing of this case i.e. 20.06.2016 till the date of realisation.

The OP No. 2 the National Insurance Company Ltd. is hereby directed to pay the compensation award of Rs.2,74,000/- (Rupees two lakh seventy four thousand only) plus interest @ 6% per annum thereon from the date of filing of this case i.e from 20.06.2016 till payment thereof to the husband of the petitioner within 60 days from the date of this order, failing which, the petitioner shall be at liberty to realise the awarded amount with interest from the Opposite Party no.2.

The petitioner is directed to file the deficit court fees before withdrawing the amount.

Since the licence of the driver was not proved to be valid or no such licence could be produced, the Insurance Company is at liberty to claim the compensation amount from the owner of the offending vehicle."

7. The appellant insurance company being aggrieved by the judgment and award passed by the learned Trial Judge has come up with the instant appeal.

8. Heard learned Advocate for the insurance company and learned Advocate for the

respondents claimants. Perused the evidence adduced and the materials on record.

9. Learned Advocate for the appellant submits that the learned Trial Judge erred in relying upon the disability certificate issued by the PW 4 although the said doctor did not examine the patient/injured. Learned Advocate further submits that as the doctor concerned did not examine the patient, the certificate of the said doctor could not be relied upon.

10. Learned Advocate also submits that it is admitted by PW 4 that she did not treat the patient. Learned Advocate also submits that the compensation awarded is excessive.

11. The following decisions are relied upon by the learned Advocate for the appellant:

    a) **Barun Kumar Das Vs. New India Assurance Co. Ltd. & Anr.** reported in **2005(1) TAC 225 (Cal),**

    b) **Dharma Raj Singh Vs. National Insurance CO. Ltd. & Anr.** reported in **2009 ACJ 1240,**

    c) **New India Assurance CO. Ltd. Vs. Ram Kishan Singh & Anr.** reported in **2001 (1) TAC 130 (Cal)**.

12. Learned Advocate for the respondent submits that the appellant insurance company did not dispute the disability in the cross-examination of

PW 1. Thus, at this stage the appellant cannot dispute the disability.

13. Learned Advocate further submits that the doctor, PW 4, subsequently examined the patient and it is held in different judicial decision that subsequent examination of patients by doctor can be relied upon.

14. Learned Advocate relies upon the following judicial decisions;

    a) **Raj Kumar Vs. Ajay Kumar & Anr.** reported in **2011 ACJ 1,**

    b) **Ratan Mali Vs. New India Assurance Co. Ltd. & Anr.** reported in **2005 ACJ 242,**

    c) **Abid Khan Vs. Dinesh & Ors.** reported in **2024 (4) TAC 806 (S.C),**

    d) **Prakash Chandra Biswas Vs. New India Assurance Co. Ltd. & Anr.** reported in **2011 ACJ 622,**

    e) **Yadava Kumar Vs. Divisional Manager, National Insurance Co. Ltd. & Anr.** reported in **2010 (4) TAC 10 (S.C).**

    f) **Tulsa Ram & Anr. Vs. Hansa Ram & Anr.** reported in **2010 ACJ 750.**

15. I In the decision of **New India Assurance CO. Ltd. Vs. Ram Kishan Singh & Anr. (Supra)** the Hon'ble Division Bench of this Court refused to rely upon the certificate of the doctor, as the said doctor was not a qualified medical practitioner

and simply an L.M.A. Thus the said decision is not applicable to the facts of this case.

16. In the case of **Dharma Raj Singh Vs. National Insurance CO. Ltd. & Anr. (Supra)** the Hon'ble Division Bench of this Court did not accept the certificate of the doctor who issued the disablement certificate of 35% on the ground that the said doctor gave his report based on X-ray plates of the year 2000 when he admitted in his report that the patient had further operation in the year 2002 and he was discharged in the month of March, 2002. Thus on the basis of the X-ray plates before the removal of steel plates, he gave his opinion. As the said doctor did not even try to ascertain the position of the injury as it stood after the removal of the plates, nor did he advise him to take fresh X-ray to ascertain the existing position, the Hon'ble Court was unable to accept the said report.

17. In the case **Barun Kumar Das Vs. New India Assurance Co. Ltd. & Anr. (Supra)** the Hon'ble Division Bench refused to accept the disability certificate issued by a doctor, on the ground that the materials on record show that the injury of the claimant was confined to some toes of his one leg for which there was some loss of sensation in such toes and the medical certificate shows permanent partial disability of the claimant to the

tune of 65% has been issued by a stock doctor who has categorically stated that he did not treat the claimant at any point of time and issued such certificate on clinical observation of the claimant. In the instant case, the disability certificate issued by the doctor is 30% and the said doctor was examined by the claimants.

18. As the Hon'ble Supreme Court has laid down the guidelines with regard to injury cases and disability cases in the case of **Raj Kumar Vs. Ajay Kumar & Anr. (Supra)** it will be necessary to consider some of the observation of the Hon'ble Supreme Court in the said judgment. The Hon'ble Supreme Court in the said judgment was pleased to observe as follows:-

"12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give `ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who

treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross- examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.

13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

19. In the same decision, the Hon'ble Supreme Court cautioned the Tribunal that if it is to accept the expert evidence of doctors who did not treat the injured but who gave ready to use disability certificate without proper medical assessment. It further observed that the doctors who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. In the instant case, the doctor did not examine the claimant when he was injured but subsequently examined him to ascertain the extent of disability.

20. In the case of **Tulsa Ram & Anr. Vs. Hansa Ram & Anr. (Supra)** the Hon'ble Court observed that:

"15. I have considered the statement of appellant Tulsa Ram with regard to C.M.A. No. 371 of 2008. Tulsa Ram has stated in his statement that he was sitting in the jeep; in accident his leg, hand, head and other parts of the body got injured; he has stated that he was engaged in agriculture job and due to injuries sustained by him he remained under treatment for a long time, his income has been adversely effected. On the basis of injury sustained by him, a government doctor after examination, has certified permanent disability up to 25 per cent vide Exh. 93. The learned Tribunal has discarded this evidence on the pretext that the said certificate has been given by a doctor who has not treated and other reasons assigned by him but reasons for not taking the said certificate

in consideration are not tenable. The claimant has stated in his statement about the gravity of injuries and effect thereof and the injuries have been further corroborated by the relevant documents. The doctor after examination of the claimants and perusal of record has given certificate with regard to permanent disability, Exh. 93, it was not necessary that the said certificate should have been given by the treating doctor alone. On the contrary, after passing a reasonable time, looking to the impact and effect of said injuries, the said certificate has been given. That should have been considered by the learned Tribunal, therefore, the finding given to this effect is quashed. The conclusion finds support from the judgment given in Vibgyar Plastics' case, I, (2002) ACC 402. In that case it has been observed that there is no rule of thumb that only the certificate issued by the doctor who treated the injured alone has evidentiary value to determine the amount of compensation and not the one issued later by another doctor, who did not treat the injured. Disability is a condition which can be assessed by any qualified medical practitioner and the same is liable to be acted upon, subject, of course, it inspires confidence in the court. On the contrary, the judgment cited by the respondent's side is not relevant. Thus, while considering the age of appellant to be 25 years and income as determined by the Tribunal of the appellant, on the basis of said permanent disability, a loss of future income as Rs. 500 per month can safely be assessed and further applying the multiplier of 17, compensation under this head comes to Rs. 1,02,000 (Rs. 500 × 12 × 17), which the claimant-appellant is held entitled to receive. I have also perused the sums of compensation awarded under

other heads, the appellant has alleged his income to be Rs. 10,000 per month, but no reliable proof has been filed. Therefore, the Tribunal, while assessing the monthly income of Rs. 3,000 compensation has been awarded under different heads a total Rs. 57,635 there is no scope for further enhancement, Thus, adding the compensation as awarded aforesaid, total compensation comes to (Rs. 57,635 + Rs. 1,02,000) = Rs. 1,59,635 rounded to Rs. 1,59,700. The Tribunal has awarded interest at the rate of 6 per cent per annum that is on the lower side, no reason has been assigned for lesser rate. Thus, the rate of interest is enhanced to 7.5 per cent per annum and claimants-appellants will be entitled to receive interest at this rate, on total compensation amount from the date of filing of claim petition."

21. In the instant case, the doctor who treated the injured patient subsequently for the purpose of assessing the disability, certificate can be considered. It is necessary to consider as to what were the materials taken into consideration by PW 4 before assessing the disability. It is stated by PW4 that he clinically examined the claimant victim, after clinical examination and examination of all medical documents, he is of the opinion that the patient has suffered permanent partial disability to the extent of 30% due to pain, stiffness of right shoulder joint with restricted movement of weakness of right upper arm and right arm muscle deformity of right

clavicle with overlapping due to malunion. Considering the necessary particulars stated in the disability certificate and considering the percentage of disability and the nature of injury, the Court is of the view that the disability certificate should not be discarded.

22. Upon considering the evidence of PW4 and the quantum of compensation awarded by the learned Trial Court, this Court is of the view that the learned Trial Judge applied the proper arithmetical calculation in arriving at the compensation. However, considering the total compensation awarded, this Court is of the view that compensation of Rs.2,50,000/- is just and reasonable.

23. Hence, this appeal **FMA No.553 of 2023** stands disposed. The judgment and award dated 17th April, 2023 passed by the learned Additional District Judge, 6th First Track Court, Alipore, in MAC Case No.45 of 2019 stands modified to the extent that the respondent No.1 claimant is entitled to Rs.2,50,000/- from the appellant insurance company along with interest @ 6% per annum from date of filing of the claim case till today.

24. As it is submitted by the learned Advocate that the compensation awarded by the learned Trial Court is already deposited, the respondent No. 1,

Clement, will be entitled to withdraw the compensation amount upon compliance of necessary formalities. Balance amount along with accrued interest, if any, shall be returned to the appellant insurance company.

25. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(**BISWAROOP CHOWDHURY, J.**)